

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Brandon D. Green,
Plaintiff
v.
Lawrence Samples, *et al.*,
Defendants

Case No. 2:19-cv-02006-CDS-VCF

Order Granting Defendants' Motion for Summary Judgment and Denying Plaintiff's Motions for Summary Judgment and a Status Check, and Closing Case

[ECF Nos. 85, 88, 90]

10 Pro se plaintiff Brandon Green brings this civil rights action under 42 U.S.C. § 1983
11 against defendant Las Vegas Metropolitan Police Department (LVMPD) detectives Lawrence
12 Samples and Michael O'Halloran. On September 19, 2019, Green was arrested inside a Las Vegas
13 7-Eleven convenience store because of outstanding criminal charges relating to an incident of
14 domestic violence. He alleges that O'Halloran used excessive force against him during the arrest
15 and that Samples sexually harassed him during a post-arrest interview.¹

16 The parties have filed competing motions for summary judgment. ECF No. 85
17 (defendants' motion); ECF No. 88 (plaintiff's motion). Green also filed a motion for a status
18 check. ECF No. 90. Having considered the moving papers, and for the reasons set forth herein, I
19 grant the defendants' motion for summary judgment and deny Green's. Because granting the
20 defendants' motion resolves this case, I also deny Green's motion for a status check (ECF No.
21 90) as moot. I further direct the Clerk of Court to enter judgment in favor of the defendants and
22 to close this case.

²⁶ ¹ These are Green's only remaining claims. He brought other claims for relief, but those were dismissed on January 6, 2022, after the defendants were not timely identified or served. ECF No. 50.

1 I. **Background**2 a. *Green's motion for summary judgment and defendants' opposition*

3 Green alleges that he visited a neighborhood 7-Eleven to retrieve a "cold beer," but when
 4 checking out at the cash register, he was "tackled from behind." ECF No. 88 at 2. Green asserts
 5 that he was "defenseless" during the arrest, which the officers effectuated without first
 6 announcing themselves. *Id.* He further alleges that a team of detectives² tackled him and applied
 7 "excessive force" to his back, neck, and shoulder, all of which resulted in lingering damage,
 8 injury, and pain. *Id.* Green alleges that his right to be free from excessive force was violated when
 9 the detectives did not announce themselves.

10 Green also alleges that Detective Samples sexually harassed him during an interview
 11 following his arrest. *See generally* ECF No. 88 at 4–5. Green claims that Samples was "overly
 12 physical" during the interview, and that Samples inappropriately touched his thigh/knee area
 13 without his consent. Green claims that his rights were violated by Samples's non-consensual
 14 touching, but also because the acts were abusive and coercive given the detective's position of
 15 power. *Id.* at 4.

16 In opposition, defendants argue that Green fails to submit any evidence supporting his
 17 claims, nor does he contest the evidence submitted by the defendants. *See generally* ECF No. 92.
 18 Defendants further argue that not only do Green's claims fail on the merits but also that the
 19 defendants are entitled to qualified immunity. *Id.* at 3–4, 8–9. As a result, defendants argue that
 20 Green's motion should be denied and that their competing motion for summary should be
 21 granted. *See generally* ECF No. 92.

22 b. *Defendants' motion for summary judgment and Green's opposition*

23 Defendants move for summary judgment in favor of both O'Halloran and Samples,
 24 contending that Green's claims under the Fourteenth Amendment are not actionable. ECF No.
 25 85. Specifically, defendants argue that O'Halloran is entitled to summary judgment because
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² Green does not specifically name or identify Detective O'Halloran in his motion.

1 plaintiff fails to demonstrate that it was O'Halloran (rather than some other detective) who
 2 used force against Green during his arrest on September 19, 2019, or that O'Halloran's use of
 3 force was unreasonable. *Id.* at 4. Defendants further argue that any force used by O'Halloran
 4 during Green's arrest was "low-level" and objectively reasonable. *Id.* at 5. Defendants submitted
 5 body-camera footage of Green's arrest to support O'Halloran's arguments. ECF No. 86.

6 Defendants also argue that Samples is entitled to summary judgment because Green has
 7 provided no evidence of "objectively outrageous conduct involving sexually[] motivated
 8 comments" or physical touching that was sexual in nature. ECF No. 85 at 5. Defendants submit
 9 video footage of the interview between Green and Samples to show "de minimis" contact
 10 between Samples and Green and to show that no contact was sexual or sexualized. *Id.* Samples
 11 further argues that at no time during the interview did Samples ever make sexual or sexually
 12 motivated comments. *Id.* Finally, defendants argue that even if the claims against O'Halloran and
 13 Samples were viable, this action is otherwise barred by qualified immunity. *Id.*

14 Green opposes defendants' motion for summary judgment. ECF No. 91. He admits that
 15 he has a "spotted criminal history," but writes that he suffered physical abuse as a child and ran
 16 away from home as a result. *Id.* He further argues that defendants' discussion of his criminal
 17 history as a way to justify how he was arrested is misleading. *Id.* at 2. Green cites to LVMPD
 18 policy, stating that officers must "clearly and audibly identify themselves as peace officers before
 19 using force," which he claims did not happen. Plaintiff then realleges sexual misconduct during
 20 this post-arrest interview with Samples based on Samples's allegedly improper touching. *Id.* at
 21 2-3.

22 **II. Legal standard**

23 The legal standard governing summary judgment is well settled. A party is entitled to
 24 summary judgment when "the movant shows that there is no genuine issue as to any material
 25 fact and the movant is entitled to judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S.
 26 317, 330 (1986); Fed. R. Civ. P. 56. An issue is "genuine" if the evidence would permit a

1 reasonable jury to return a verdict for the nonmoving party. *Soremekun v. Thrifty Payless, Inc.*, 509
 2 F.3d 978, 984 (9th Cir. 2007). “[T]he substantive law will identify which facts are material. Only
 3 disputes over facts that might affect the outcome of the suit under the governing law will
 4 properly preclude the entry of summary judgment. Factual disputes that are irrelevant or
 5 unnecessary will not be counted.” *Anderson v. Liberty Lobby*, 477 U.S. 242, 248 (1986). Conclusory
 6 statements, speculative opinions, pleading allegations, or other assertions uncorroborated by
 7 facts are insufficient to establish a genuine dispute. *Soremekun*, 509 F.3d at 984 (9th Cir. 2007).
 8 When considering a motion for summary judgment, the court views all facts and draw all
 9 inferences in the light most favorable to the nonmoving party. *Colwell v. Bannister*, 763 F.3d 1060,
 10 1065 (9th Cir. 2014).

11 Summary judgment proceeds in a burden-shifting step analysis. The burden starts with
 12 the moving party. A party seeking summary judgment bears the initial responsibility of
 13 informing the court of the basis of its motion, and identifying those portions of the pleadings,
 14 depositions, answers to interrogatories, and admissions on file, together with affidavits, if any,
 15 and other evidence which it believes demonstrate the absence of a genuine issue of material fact.
 16 *Celotex*, 477 U.S. at 325. A trial court can only consider admissible evidence in ruling on a motion
 17 for summary judgment. *Orr v. Bank of America*, 285 F.3d 764 (9th Cir. 2002). If the moving party
 18 meets its initial burden of showing the absence of a material and triable issue of fact, the burden
 19 then moves to the opposing party, who must present significant probative evidence tending to
 20 support its claim or defense. *Intel Corp. v. Hartford Accident & Indem. Co.*, 952 F.2d 1551, 1558 (9th
 21 Cir. 1991).

22 **III. Analysis**

23 I begin by addressing Green’s motion for summary judgment. I then resolve defendants’
 24 motion. Finally, I briefly address Green’s motion for a status check.

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1 a. Plaintiff's motion is denied because he fails to demonstrate that he is entitled to summary judgment.

2 On motions for which the moving party will bear the ultimate burden of proof at trial,
 3 such as with plaintiff's cross-motion for summary judgment here, the plaintiff bears the burden
 4 of proof on all essential elements of his claims. *Southern Cal. Gas Co. v. Santa Ana*, 336 F.3d 885, 888
 5 (9th Cir. 2003). He also has, as the moving party, the initial burden of demonstrating the
 6 absence of a "genuine issue of material fact for trial." *Anderson*, 477 U.S. at 256.

7 As the moving party, Green fails to meet this initial burden. The moving party must
 8 demonstrate, on the basis of authenticated evidence, that the record forecloses the possibility of
 9 a reasonable jury finding in favor of the nonmoving party as to disputed material facts. *Celotex*,
 10 477 U.S. at 323; *Orr*, 285 F.3d at 773. There is no evidence other than the statements in Green's
 11 moving papers to support his request for summary judgment.

12 Furthermore, although pro se pleadings must be construed liberally, pro se litigants are
 13 nonetheless bound by the rules of procedure. *Ghazali v. Moran*, 46 F.3d 52, 54 (9th Cir. 1995).
 14 Local Rule 56-1 sets forth the requirements for filing a motion for summary judgment. The rule
 15 states that "[m]otions for summary judgment and responses thereto must include a concise
 16 statement setting forth each fact material to the disposition of the motion that the party claims
 17 is or is not genuinely in issue, citing the particular portions of any pleading, affidavit, deposition,
 18 interrogatory, answer, admission, or other evidence on which the party relies." LR 56-1.

19 Green's motion fails to cite to or submit any admissible evidence in support of his
 20 motion. Instead, his motion relies solely on his own summary of events and allegations in the
 21 complaint. Allegations alone are not sufficient to meet a plaintiff's burden at summary judgment;
 22 instead, a plaintiff must submit admissible evidence. *Morgan v. Peninsula Corridor Joint Powers Bd.*,
 23 2014 WL 231136, at *2 (N.D. Cal. Jan. 21, 2014) (citing *Devereaux v. Abbey*, 263 F.3d 1070, 1076 (9th
 24 Cir. 2001)). Not only has Green failed to provide the court with admissible evidence, but he has
 25 also failed to meet his burden of proof on each of the essential elements of his claims.

1 Consequently, Green has not demonstrated the absence of a genuine issue of material fact, so his
 2 motion for summary judgment (ECF No. 88) is denied.

3 b. *Defendants demonstrate that they are entitled to qualified immunity and that Green's claims for relief*
 4 *are meritless.*

5 42 U.S.C. § 1983 was enacted “to deter state actors from using the badge of their
 6 authority to deprive individuals of their federally guaranteed rights.” *Anderson v. Warner*, 451 F.3d
 7 1063, 1067 (9th Cir. 2006) (quoting *McDade v. West*, 223 F.3d 1135 1139 (9th Cir. 2000)). The
 8 statute “provides a federal cause of action against any person who, acting under color of state
 9 law, deprives another of his federal rights[.]” *Conn v. Gabbert*, 526 U.S. 286, 290 (1999). Section
 10 1983 requires a plaintiff to allege (1) the violation of a federally protected right by (2) a person or
 11 official acting under the color of state law. *Collins v. Womancare*, 878 F.2d 1145, 1147 (9th Cir. 1989).
 12 To prevail, the plaintiff must establish each of the § 1983 elements to prove an infringement of
 13 the underlying constitutional or statutory right.

14 Green claims that excessive force was used against him during his arrest, which I
 15 liberally construe as an alleged violation of his Fourth Amendment right to be free from unlawful
 16 seizures. “Claims of excessive and deadly force are analyzed under the Fourth Amendment’s
 17 reasonableness standard.” *Long v. City & County of Honolulu*, 511 F.3d 901, 906 (9th Cir. 2007)
 18 (citing *Graham v. Connor*, 490 U.S. 386, 395 (1989); *Tennessee v. Garner*, 471 U.S. 1, 7 (1985)). The
 19 court must determine whether the force used by each defendant-officer was “objectively
 20 reasonable” as “judged from the perspective of a reasonable officer on the scene, rather than with
 21 the 20/20 vision of hindsight.” *Graham*, 490 U.S. at 396–97 (citations omitted). To properly apply
 22 the Fourth Amendment reasonableness test, the court must pay “careful attention to the facts
 23 and circumstances of each particular case, including the severity of the crime at issue, whether
 24 the suspect poses an immediate threat to the safety of the officers or others, and whether he is
 25 actively resisting arrest or attempting to evade arrest by flight.” *Graham*, 490 U.S. at 396. “The

1 most important factor is whether the suspect posed an immediate threat to the safety of the
 2 officers or others.” *Thomas v. Dillard*, 818 F.3d 864, 889 (9th Cir. 2016).

3 Both defendants allege that they are entitled to qualified immunity. A court conducts a
 4 two-step inquiry to determine whether an officer is entitled to qualified immunity. *Ramirez v. City*
 5 *of Buena Park*, 560 F.3d 1012, 1020 (9th Cir. 2009) (stating that the court may conduct the inquiry
 6 in any order it prefers). Under one prong, the court considers whether “taken in the light most
 7 favorable to the [plaintiff], the facts alleged show the officer’s conduct violated a constitutional
 8 right.” *Id.* (internal marks omitted). If the answer is “no,” the inquiry ends, and judgment must
 9 be entered in favor of the defendant, as the plaintiff cannot prevail. *Motley v. Parks*, 432 F.3d 1072,
 10 1077 (9th Cir. 2005), *rev’d on other grounds*, 687 F.3d 1189 (9th Cir. 2012).

11 Here, Green, who has a documented history of committing violent felonies, was arrested
 12 as part of an ongoing investigation of serious felony offenses, including battery by strangulation,
 13 kidnapping in the first degree, sexual assault, attempted murder, and possession of a firearm. *Id.*
 14 at ¶¶ 6–7. Defendants argue that they used force to arrest Green because of his history of
 15 violence, combined with their knowledge that Green may have been armed because the victim of
 16 Green’s alleged sexual assault reported that he took her handgun days earlier. *Id.* at 19–20. They
 17 argue that the totality of the circumstances “presented officers with an unpredictable suspect
 18 who already showed signs of attempting to evade responsibility and [who] might continue to do
 19 so if confronted by law enforcement.” *Id.* at 20.

20 As he was being arrested, Green was, indeed, taken down to the ground by undercover
 21 officers. He now claims injuries from the arrest. But the video of his post-arrest interview does
 22 not support this allegation. Throughout Green’s interview, which lasts approximately three
 23 hours and 45 minutes, Green does not complain about any injuries from his arrest. Def. Ex. D;
 24 ECF No. 85-5 (transcript of interview). At one point, while discussing Green’s backhanding of
 25 the victim of the underlying charges, Green comments that he has a scratch on his hand from the
 26 arrest (Def. Ex. D at 2:03:19–25; ECF No. 85-5 at 14), but he makes no complaints or other

1 statements regarding the use excessive force during his arrest. The video also shows him able to
 2 move without pain: he places his head on the table and sleeps with and without his head resting
 3 on his hands for part of the video (Def. Ex. D at 8:33–13:20; 20:31–35:00; 1:20:47–1:22:49; 1:37:00–
 4 1:37; 3:03:31–3:05:13); he is able to gesture and rest his elbows on the table and his head in his
 5 hands without issue; and at another point he gets up and moves his body to sit in order to be
 6 able to write easier, again seemingly without pain or any issues. *See generally* Def. Ex. D at 2:55:13–
 7 3:01.

8 Last, Green's medical records contradict his claim of excessive force. *See generally* ECF No.
 9 85-9. The records reveal that when he was booked into the Clark County Detention Center,
 10 Green advised staff that he had an injury from a 2008 gunshot wound ("GSW") and that he was
 11 recently treated for CBP,³ and the records indicate that he had sinus issues and an
 12 "unremarkable" appearance. *Id.* at 5. He also reported that he has been treated for some mental
 13 health issues. *Id.* at 13. When selecting whether Green needed a medical referral, the healthcare
 14 screener selected "Routine," as opposed to "Emergent" or "Urgent." *Id.* at 15.

15 Detective O'Halloran states that he was not one of the officers who initially arrested
 16 Green. O'Halloran Decl., ECF No. 85-11 at ¶ 9. Rather, he entered the 7-Eleven store where the
 17 arrest took place *after* Green was already on the ground and under arrest. O'Halloran then
 18 "placed [his] hands on Mr. Green's head and shoulders to restrain his movement while two
 19 other officers applied handcuffs to Mr. Green." *Id.* at ¶ 10. O'Halloran further states that his
 20 "actions consisted of a low-level force technique used to control Mr. Green's movements so that
 21 he could not break free from officers while being handcuffed or attempt to fight back against
 22 officers." *Id.* Last, O'Halloran states that he did not apply his knee to plaintiff's neck or back, nor
 23 did he ever point his gun or Taser at the plaintiff. *Id.* at ¶ 12.

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 26 ³ I do not speculate as to what CBP means but the records reveal Green was taking medication for the
 condition two weeks prior to his arrest. ECF No. 85-9 at 7. It therefore could not have been initially
 caused by the arrest.

1 Based on the evidence provided by O'Halloran, he merely assisted other officers in
 2 arresting Green and ensuring that he neither resisted nor escaped. These actions appear to be
 3 that of a reasonable officer. Stated otherwise, O'Halloran met his initial burden for purposes of
 4 summary judgment in demonstrating that no violation of Green's constitutional rights occurred.
 5 Thus, the burden shifted to Green "to establish, beyond the pleadings, that there is a genuine
 6 issue for trial." *Miller*, 454 F.3d at 987. Green would need to establish that O'Halloran violated
 7 one of his federally protected rights—in this instance, his Fourth Amendment rights.⁴ Plaintiff
 8 fails to do so. Green submits no evidence to support the allegations made in his complaint or the
 9 summary of his version of events in his opposition. *See generally* ECF No. 91. This is insufficient.
 10 *See Hernandez v. Spacelabs Med. Inc.*, 343 F.3d 1107, 1112 (9th Cir. 2003) (stating that, when the
 11 moving party carries its initial burden on a motion for summary judgment, the nonmoving party
 12 "cannot defeat summary judgment with allegations in the complaint, or with unsupported
 13 conjecture or conclusory statements."). Green fails to demonstrate that O'Halloran violated his
 14 Fourth Amendment rights. I therefore find that O'Halloran is entitled to qualified immunity for
 15 his actions relating to Green's arrest and grant summary judgment in his favor.

16 I likewise find that Samples is entitled to qualified immunity.⁵ To succeed on this claim,
 17 Green would need to establish that Samples violated one of his federally protected rights. I
 18 liberally construe Green's complaint to allege a violation of his Fourteenth Amendment rights.
 19 But the video of Green's interview shows that Samples did not subject Green to any
 20 inappropriate verbal or physical actions, nor is there any evidence of sexual touching,
 21 misconduct, or harassment. *See generally* Def. Ex. D; *see also* ECF No. 85-8 (providing still
 22 photographs of each instance of Samples touching Green during the post-arrest interview).
 23 Rather, the video demonstrates a few instances in which Samples is attempting to be friendly or
 24 empathetic with Green by touching his shoulder. Def. Ex. D. There is also one instance of
 25

26 ⁴ There is no dispute that O'Halloran, as an LVMPD officer, was acting under the color of state law.

⁵ As with O'Halloran, there is no dispute that Samples was acting under the color of state law.

1 Samples's right pointer finger grazing—if it touches at all—Green's kneecap during
2 conversation. *Id.* None of the touching was objectively unreasonable, nor was it sexual in nature.
3 And during Green's deposition, he admitted that Samples never touched Green under his
4 clothes. ECF No. 85-2 at 39:1–4. Based on the evidence before me, I find that Samples meets his
5 initial burden for purposes of summary judgment. Thus, again, the burden shifts to Green “to
6 establish, beyond the pleadings, that there is a genuine issue for trial.” *Miller*, 454 F.3d at 987.
7 Again, Green fails to do so. In fact, Green has failed to provide any evidence whatsoever
8 demonstrating that Samples violated one of his federally protected rights. As a result, I find that
9 Samples is entitled to qualified immunity and grant summary judgment in his favor.

10 **IV. Motion for status check**

11 Because this order grants summary judgment in defendants' favor and I am directing the
12 Clerk of Court to close this case, there is no reason to hold a status check. Thus, Green's motion
13 for a status check is denied.

14 **V. Conclusion**

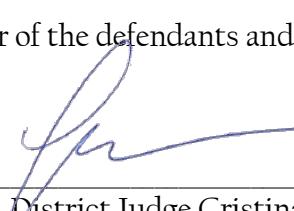
15 For the reasons set forth in this order,

16 IT IS THEREFORE ORDERED that defendants' Motion for Summary Judgment [ECF
17 No. 85] is GRANTED.

18 IT IS FURTHER ORDERED that plaintiff's Motion for Summary Judgment [ECF No.
19 88] is DENIED.

20 IT IS FURTHER ORDERED that plaintiff's Motion for a Status Check [ECF No. 90] is
21 DENIED as moot.

22 I direct the Clerk of Court to enter judgment in favor of the defendants and to CLOSE
23 THIS CASE.

24 
25 U.S. District Judge Cristina D. Silva
26 Dated: March 31, 2023